

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

STEPHANIE CARTER,

*Plaintiff,*

v.

DENIS RICHARD McDONOUGH, *et al.*,

*Defendants.*

Civil No.: 6:22-cv-01275-ADA

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE***

Former U.S. Secretary of Veterans Affairs Robert Wilkie respectfully requests leave of this Court to file a brief as *amicus curiae* in this case. The proposed brief is attached to this motion as an exhibit. In support of this motion, *Amicus* Wilkie asserts the following:

1. Although not discussed in the Federal Rules of Civil Procedure or the Local Rules, this Court has inherent authority to allow the participation of an *amicus curiae*. *See Pachecho v. Freedom Buick GMC Trunk, Inc.*, No. 10-cv-116, 2011 WL 13234884, at \*1 (W.D. Tex. Nov. 1, 2011).

2. This case concerns a topic of extraordinary public interest: What the policies of the United States Government shall be regarding the contentious issue of abortion in the wake of the Supreme Court's recent watershed decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), overruling decades of controversial precedent that had erroneously held that the Constitution provides a right to abortion. *See id.* at 2284. This Court would benefit from additional legal analysis in crafting caselaw in this consequential and unsettled jurisprudential area.

3. Secretary Wilkie is the most recent person to have had the honor of serving as Secretary of the U.S. Department of Veterans Affairs (“VA”) prior to the current Secretary. As such, Secretary Wilkie has rare and valuable insight into the operations and policymaking processes of the VA, and this Court would benefit immensely from it.

4. Plaintiff Stephanie Carter brought this suit as a religious liberty challenge under the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb–2000bb-4, and the First Amendment to the Constitution. However, the VA’s action here also violates the procedures required by the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* Plaintiff briefly mentions that issue in her Complaint, ECF No. 1 ¶¶ 77, 79, and in Plaintiff’s Motion for Preliminary Injunction, *see* ECF No. 13 at 12, 31–32, but, understandably, does not develop the point because it is not a separate count. The former Secretary believes it is essential to apprise this Court as to how the VA’s action here was inconsistent with the Administrative Procedure Act, separate from its RFRA and constitutional violations.

### CONCLUSION

For these reasons, *Amicus Curiae* respectfully moves this Court to grant leave to file the attached brief.

January 17, 2023

Respectfully submitted,

/s/ Kenneth A. Klukowski  
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\* *pro hac vice* application pending

\*\* *pro hac vice* application forthcoming

**CERTIFICATE OF CONFERENCE**

Undersigned counsel hereby certifies that counsel conferred with all parties regarding this motion seeking leave of Court to file the *amicus* brief. None of the parties object to the motion. Accordingly, the foregoing motion is presented to this Court as unopposed.

/s/ Kenneth A. Klukowski  
Kenneth A. Klukowski

*Counsel for Amicus Curiae*

January 17, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on January 17, 2023, the foregoing document was filed through the Court's ECF system and a copy will be served on all parties according to the Federal Rules of Civil Procedure.

/s/ Kenneth A. Klukowski

Kenneth A. Klukowski

*Counsel for Amicus Curiae*

January 17, 2023